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EXAMINER

ANDERSON, GERALD A

ART UNIT

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Paper No. 15

Application Number: 09/113,446
Filing Date: July 10, 1998
Appellant(s): WAGNER ET AL.

MAILED

JUL 15 2002

GROUP 3600

George W. Hoover
For Appellant

SUPPLEMENTAL EXAMINER'S ANSWER

Pursuant to the Remand under 37 CFR 1.193(b)(1) by the Board of Patent Appeals and Interferences on 10 June 2002, a supplemental Examiner's Answer is set forth below: the reference Mottmiller et al has been added to section (9) of this answer.

(1) *Real Party in Interest*

A statement identifying the real party in interest is contained in the brief.

(2) *Related Appeals and Interferences*

A statement identifying the related appeals and interferences which will directly affect or be directly affected by or have a bearing on the decision in the pending appeal is contained in the brief.

(3) Status of Claims

The statement of the status of the claims contained in the brief is correct.

(4) Status of Amendments After Final

No amendment after final has been filed.

(4) Status of Amendments After Final

No amendment after final has been filed.

(5) Summary of Invention

The summary of invention contained in the brief is correct.

(6) Issues

The appellant's statement of the issues in the brief is correct.

(7) Grouping of Claims

The rejection of claims 6-11 stand or fall together because appellant's brief does not include a statement that this grouping of claims does not stand or fall together and reasons in support thereof. See 37 CFR 1.192(c)(7).

(8) Claims Appealed

The copy of the appealed claims contained in the Appendix to the brief is correct.

(9) Prior Art of Record

4,758,712	MATONE et al	7-1988
5,368,380	MOTTMILLER et al	11-1994

(10) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claims 6-8 are rejected under 35 U.S.C. (b). This rejection is set forth in prior Office Action, Paper No. 6.

Claims 9 and 10 are rejected under 35 U.S.C. 103(a). This rejection is set forth in prior Office Action, Paper No. 6.

Claim 11 is rejected under 35 U.S.C. 103(a). This rejection is set forth in prior Office Action, Paper No. 6.

(11) Response to Argument

Appellant's makes one point the determining factor in this appeal. That does the language in the claim 6, particularly the statement "a **one-piece**, hollow body portion", define over the reference to Schmidt. Claim 1 defines the invention as "A housing for a portable handheld electronic reader/scanner". The housing comprises two parts "a one-piece, hollow body portion" and "a substantially planar scan face". The housing of claim one also defines the intersection of the body portion and the scan face.

Schmidt shows a handheld scanner. Parts of the disclosure deal with the housing comprising a housing and refers to the handle portion 9B and the head portion 9A of the housing, see col. 10 11. The Appellant draws our attention to only col.13, the last paragraph where the housing is realized as a five-piece construction. These five pieces include the scanner face 9G, battery cover 9E, and end cap 9F.

Appellant's housing actually includes three parts: a scanner face, a combination battery cover and end cap and the body portion.

Therefore the difference between the Appellants device and Schmidt is in what is termed the body portion. Schmidt discloses upper and lower body parts which when secured to each other make the body portion. One could therefore say that the body portion of Schmidt is one-piece of the scanner. Certainly Schmidt leads us in this direction when referring to the scanner housing as having a head portion and a handle portion not distinguishing between the scanner face and the body or the battery cover and the body. The Appellant's invention is a housing according to the preamble of the Appellant's claims. Schmidt shows us a scanner, part of which is a whole housing. There are other ways to distinguish the body portion of the housing. The Board of Appeals has for example distinguished between devices which are integral and devices which are unitary. The Appellant believes that "a one-piece, hollow body portion" is sufficient to distinguish over Schmidt. The Examiner disagrees. The scanner of Schmidt does not function if the body portion is not in one-piece.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

Jaa
July 9, 2002

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